Supreme Court, U.S.
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No. 05-

In the
Supreme Court of the United States

Barbara C. Johnson
Petitioner
v.
Board of Bar Overseers of Massachusetts,
M. Ellen Carpenter, Esq.,
in her individual and professional capacities,
including her capacity as
Chair of the Board of Bar Overseers,
Herbert P. Phillips, Esq.,
in his individual and professional capacities,
Office of Bar Counsel,
Daniel Crane, Esq.,
in his individual and professional capacities,
Commonwealth of Massachusetts,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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First Circuit Bar No. 36719

QUESTIONS PRESENTED

1. Whether a federal district court may stay or proceed rather than dismiss on *Younger* grounds a declaratory judgment action of which the result could not affect a parallel state administrative attorney-disciplinary proceeding.

2. Whether a federal district court may stay or proceed rather than dismiss on *Younger* grounds a claim for monetary relief that cannot be redressed in the state proceeding.

3. Whether quasi-judicial and quasi-prosecutorial immunity, regardless of the source, may preempt that article -- article V of the Massachusetts Declaration of Rights -- which guarantees that all magistrates and officers of all three branches of government be accountable to all the people all the time.

4. Whether quasi-judicial and quasi-prosecutorial immunity arising out of a rule of an "affiliated entity" – in this case, the Board of Bar Overseers -- of a state high court is insufficient to preempt article V's guarantee of accountability to Petitioner and dismiss her claims against the Respondents in their individual capacities.

5. Whether the second prong of the Eleventh Amendment, which was never duly ratified and was created by judicial fiat, may not – absent congressional intent -- invoke the Supremacy Clause to both trump article V's guarantee of accountability to Petitioner and dismiss her claims against the Respondents in their official capacities.

6. Whether federal courts may use judicially-created abstention doctrines, about which Congress was silent and formed no intent, to preempt, pursuant to the Supremacy Clause, state statutes, rules, and regulations, and/or state constitutions.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the United States Court of Appeals for the First Circuit were petitioner Barbara C. Johnson and respondents Board of Bar Overseers of Massachusetts, M. Ellen Carpenter, Esq. (Chair of the Board of Bar Overseers), Herbert P. Phillips, Esq. (Special Hearing Officer), Office of Bar Counsel, Daniel Crane, Esq. (Bar Counsel), and the Commonwealth of Massachusetts.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Barbara Johnson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case. In plain contravention of the requirements of the Constitution of the United States, federal law, the Constitution of the Commonwealth of Massachusetts, and state law, the Board of Bar Overseers and Office of Bar Counsel and the natural defendants have embarked on an *ad hoc*, standardless, subjective, arbitrary, and lawless exercise of quasi-judicial and quasi-prosecutorial power, which appears designed to thwart the will of the petitioner (and other members of the Bar similarly situated) as well as the considered judgments of Massachusetts legislative branch.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit (Add. 1) entered on March 31, 2005, and is unreported. The Memorandum and Order of the district court (Add. 4) is reported at 324 F.Supp.2d 276 (D. Mass. 2004).

JURISDICTION

The judgment of the United States Court of Appeals issued on March 31, 2005. This Court has jurisdiction over this petition under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

U.S. Const., Article 3, §1.

Section 1 of art, 3 reads in pertinent part, "The Judges, both of the supreme and inferior Courts, shall hold their Offices **during good Behaviour**, . . ." *Id.* (emphasis supplied).

U.S. Const., Article 6, cl. 2.

Clause 2 of Article VI reads in pertinent part, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

U.S. Const., First Amendment.

The First Amendment provides, in pertinent part: "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people . . . to petition the Government for a redress of grievances."

U.S. Const., Fifth Amendment.

The Fifth Amendment provides, in pertinent part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

U.S. Const., Ninth Amendment.

The Ninth Amendment provides, in pertinent part: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

U.S. Const., Eleventh Amendment.

The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

U.S. Const., Fourteenth Amendment, Section 1.

Section 1 of the Fourteenth Amendment reads in pertinent part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Mass. Const. Part the First, Declaration of Rights, art. V.

Article V reads: "All power residing originally in the people, and being derived from them, the magistrates and officers of government, visited with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times **accountable** to them." Id. [emphasis supplied].

Mass. Const., Part the First, Declaration of Rights, art. VIII.

Article VIII reads: "In order **to prevent those, who are vested with authority, from becoming oppressors**, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to . . . " Id. [emphasis supplied].

Mass. Const., Part the First, Declaration of Rights, art. XI.

Article XI reads in pertinent part, "Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. . . . conformably to the laws."

Mass. Const., Part the First, Declaration of Rights, art. XX.

Article XX reads, "The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for."

Mass. Const., Part the First, Declaration of Rights, art. XXIX.

Article XXIX reads, "It is essential to the preservation of the rights of every individual, his life, liberty, property, and